

United States District Court  
Northern District of Texas  
Lubbock Division

UNITED STATES OF AMERICA

v.

JOSHUA HEATH ZUNIGA

11546 Ashdon Lane

Frisco, Tx 75035

(Name and Address of Defendant)

CRIMINAL COMPLAINT

CASE NUMBER: 5:06-mj-055

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief: From in or about June, 2005, through in or about December, 2005, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Joshua Heath Zuniga**, defendant, did knowingly, by means of the Internet and telephone, both being facilities and means of interstate and foreign commerce, entice Jane Doe, an individual who had not attained the age of eighteen (18) years, to engage in sexual activity for which **Zuniga** could be charged with a criminal offense.

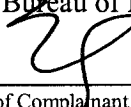
In violation of Title 18, United States Code, Sections 2422(b) and 2.

I further state that I am a(n) Special Agent of the Federal Bureau of Investigation and that this complaint is based on the following facts:

See attached Affidavit of Special Agent Keith Quigley, Federal Bureau of Investigation, which is incorporated and made a part hereof by reference.

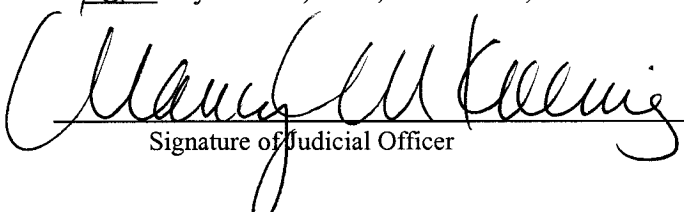
Continued on the attached sheet and made a part hereof: Yes

KEITH QUIGLEY, Special Agent  
Federal Bureau of Investigation

  
\_\_\_\_\_  
Signature of Complainant

Sworn to before me and subscribed in my presence, on this 16th day of June, 2006, at Lubbock, Texas.

NANCY M. KOENIG  
UNITED STATES MAGISTRATE JUDGE  
Name & Title of Judicial Officer

  
\_\_\_\_\_  
Signature of Judicial Officer

**AFFIDAVIT OF SPECIAL AGENT KEITH QUIGLEY  
IN SUPPORT OF CRIMINAL COMPLAINT**

Since this affidavit is being submitted for the limited purpose of providing probable cause in support of a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause that a violation of Title 18, United States Code, Section 2422(b) has been committed.

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), United States Department of Justice, and I have been so employed since 1997. I have been assigned to the Lubbock, Texas, Resident Agency since 1998.

2. As part of my official duties, I have conducted and participated in investigations relating to the sexual exploitation of children. During these investigations, I have observed and reviewed examples of child pornography in various forms of media, including computer media. As part of my duties and responsibilities as an FBI Special Agent, I am authorized to investigate crimes involving the sexual exploitation of children, including violations of Title 18, United States Code, Sections 2251, et seq., and Section 2422(b).

3. On December 9, 2005, an adult female contacted me relating to Joshua Heath Zuniga sending inappropriate text messages to her 13 year-old daughter. This reporting party advised that Zuniga is her 23 year-old half-brother and her daughter's uncle. Additionally, the reporting party stated that she just learned that her daughter had

been having a sexual relationship with Zuniga, and he had her send him a number of sexually explicit videos and pictures of herself via the Internet.

4. On December 12, 2005, the reporting party and her husband came to the Lubbock FBI Office where they provided the following information:

5. Joshua Heath Zuniga (born June 30, 1982), resided in the Houston, Texas, area as of that date, with his mother and father, although the family was at that time planning to move to the Dallas, Texas area sometime within the next week or two.

6. During the last week of June, 2005, the reporting party, her husband, and three children, including her daughter, "Jane Doe", went on vacation to Mexico. Zuniga was on the trip. "Jane Doe" was at the time of the report, in December, 2005, an 8th grade student at a junior high school in Lubbock, Texas.

7. After returning from the trip, the reporting party noticed that Zuniga took an interest in her daughter, and vice versa. Zuniga and "Jane Doe" started having telephone communications after returning to Lubbock. Doe's mother believed that Zuniga would often help "Doe" with her homework.

8. Sometime in or around late July, 2005, the reporting party sent her daughter to visit the Zuniga family in Houston for about one week. She also sent "Jane Doe" and her son to visit them in Houston the weekend prior to Halloween, 2005.

9. On December 5, 2005, "Jane Doe's" step-father was having problems logging onto the Internet and subsequently determined that the problem may be associated with "Jane Doe's" computer. "Jane Doe" had recently obtained a computer from the

Zunigas while they were visiting Lubbock over Thanksgiving break. While visiting, Zuniga set up the computer for "Jane Doe" in her bedroom. After checking to see if the Internet problem was associated with "Jane Doe's" computer, a number of sexually explicit videos and still images of "Jane Doe" were located on the computer.

10. These videos and images were saved on a flash drive, and the videos and images were deleted off the computer. It appeared that "Jane Doe" had taken the videos and images of herself in her bedroom. The reporting party then viewed the videos and images. "Jane Doe" was confronted, and she told the reporting party she had sent the images to her ex-boyfriend, although she later acknowledged that she had not sent the images to her ex-boyfriend, but had sent them to Zuniga after Zuniga had asked her to produce the videos and pictures and send them to him. "Jane Doe" had further stated that she had sent the videos and images to Zuniga by way of the Internet. "Jane Doe" professed her love for Zuniga and told her parents she did it voluntarily and Zuniga did not force her to do it. The reporting party and her husband took the computer and phone away from "Jane Doe", instructing her not to contact Zuniga.

11. On December 5, 2005, the reporting party obtained "Jane Doe's" e-mail password and located four text message e-mails sent to "Jane Doe" from Zuniga. The reporting party forwarded these e-mails to her personal e-mail and forwarded them to me on December 9, 2005. Each of the four text messages had an image attached. Three of the images showed Zuniga's face and the other was a picture of a house. In one of the e-mails, dated December 2, 2005, Zuniga stated to "Jane Doe": "I love u my baby! Kisses

and hugs. I miss u!,” and in another e-mail, dated December 4, 2005, he stated to “Jane Doe”: “Happy anniversary kisses!”

12. The reporting party and her husband brought the home-built computer tower that the Zunigas had given to “Jane Doe”, along with a flash drive that the reporting party’s husband had used to save some of the sexually explicit videos and images of “Jane Doe”, to me at the Lubbock Office of the FBI on December 12, 2005. Additionally, the reporting party and her husband brought a Gateway computer tower that belonged to the reporting party's mother and step-father. The reporting party and her husband believe that “Jane Doe” also used this computer to communicate with Zuniga while she would visit her grandparents' residence in Lubbock.

13. Sometime after December 5, 2005, but during that same week, the reporting party attempted to log back into “Jane Doe's” e-mail account, with negative results. After she confronted “Jane Doe” about what she learned, “Jane Doe” contacted Zuniga and provided her e-mail password, which he changed so no one could log into “Jane Doe's” e-mail account. One of “Jane Doe's” friends received two e-mails from “Jane Doe's” account that were written by Zuniga. The first e-mail, dated December 6, 2005, stated as follows:

Hey, I know u'll prob talk to (XXX) before me cause they found out. Please tell her how much I care about her and that I am here for her even if can't talk right now. I know u haven't really liked me or approved of us, but I do really care for her and I know she really needs to know that I'm still here and want to be with her, so if you could pass that on it would be great. You can email here and i'll get it.

Thanks for the help,

J

The second e-mail, dated December 7, 2005, stated:

Hey, I know I haven't heard back from you yet, but just thought I'd add a couple things. I know your (XXX's) best friend, so even if she does end up moving on from this and me, I want to make sure she is ok, and that she doesn't end up going back to people like (XXX) who aren't good for her. I know you agree, but he just sent an email cause she tried to call him last night, and I know he's going to try and use her emotional state to get her back just like he did last time. I don't want her hurt, and if I could do any more I would, but since I can't talk to her, you are my only hope of getting anything to her. I hope you understand and will help, she really needs to know how I feel, and that my feelings for her haven't changed. I know you were worried I would hurt her or leave her etc., but I want you to know I didn't plan on it, and still don't if she still wants to be with me. I miss her and hope she is doing ok, I look forward to hearing from you on some of this, so talk to you later.

J

On December 12, 2005, "Jane Doe" was interviewed and provided the following information (Paragraphs 14 through 25):

14. "Jane Doe" was an 8th grade student in Lubbock, Texas, at the time of the interview.

15. Sometime in late June, 2005, "Jane Doe" and her family took a vacation to Mexico. Zuniga and his parents ("Jane Doe's" grandparents) also went on vacation with them. After returning from Mexico, "Jane Doe" started conversing with Zuniga on a regular basis. Zuniga and "Jane Doe" communicated on the telephone and through the Internet. She used the computer at her grandparent's house, where she would go after school until her parents got home from work. Zuniga's e-mail address was

zerocool101@hotmail.com and his cellular telephone number was 713-703-XXXX. After having conversations and chats, "Jane Doe" and Zuniga started having intimate feelings for each other.

16. Around the end of July, 2005, "Jane Doe" took a vacation to Houston and stayed with Zuniga and his parents. While staying with them, Zuniga and "Jane Doe" became intimate with one another. Zuniga and "Jane Doe" kissed and touched each other on a number of occasions. Zuniga touched "Jane Doe" on her breast and her vagina. One evening while they were in Zuniga's room kissing, "Jane Doe's" grandmother, (Zuniga's mother), walked into the room and observed them kissing. Mrs. Zuniga (her grandmother) did not make a scene and did not have a conversation with "Jane Doe" about what she saw.

17. "Jane Doe" later learned that her grandmother had a conversation with Zuniga about what she observed. Zuniga told "Jane Doe" that his mother did not like what she saw and initially did not approve of the relationship between the two of them, but after Zuniga explained his feelings for "Jane Doe", she supported the relationship. "Jane Doe" knew it was inappropriate and wrong for her to have a relationship with Zuniga because he was 23 years old and is her uncle, although she felt that she loved him very much, and she also believed that Zuniga loved her.

18. "Jane Doe" took another trip to visit Zuniga and his parents the weekend before Halloween, 2005. According to "Jane Doe", while staying at the residence, Zuniga and "Jane Doe" started doing more "things" with each other. They kissed, touched each

others' genital areas, performed oral sex on each other, and Zuniga digitally penetrated her vagina with his finger. They did not have genital-genital sexual intercourse during this visit. Zuniga told "Jane Doe" he wanted to have genital-genital sexual intercourse with her, although he told her he was willing to wait until she was ready to do it.

19. During the week of Thanksgiving, 2005, Zuniga and his parents came to visit "Jane Doe" and her family. They stayed in a hotel in Southwest Lubbock. "Jane Doe" stayed at the hotel with them. While at the hotel, "Jane Doe" was supposed to sleep with her grandmother. On the evening of November 23, 2005, however, "Jane Doe" stayed out in the living room (of the hotel) where Zuniga slept. After everyone was asleep, Zuniga and "Jane Doe" had genital-genital sexual intercourse. Zuniga used a condom to protect "Jane Doe" from getting pregnant. Zuniga and his parents left Lubbock to go back home on November 24, 2005.

20. Prior to returning to Houston, Zuniga gave "Jane Doe" a desktop computer. "Jane Doe" stated Zuniga had obtained a new computer and wanted her to have his old one, which he brought her from Houston. Zuniga helped "Jane Doe" set up the computer during his visit to Lubbock.

21. After providing "Jane Doe" the computer, Zuniga asked "Jane Doe" to use her web cam to take sexually explicit videos and pictures of herself and send them to him. Zuniga asked "Jane Doe" to be "creative" producing the videos and images. "Jane Doe" took sexually explicit pictures and video of herself, as Zuniga had requested, and sent them to him via the Internet. Zuniga did not force her to take the video and pictures, and



“Jane Doe” claimed she did this to just make him "happy." “Jane Doe” stated she would not have taken the sexually explicit video and pictures of herself if Zuniga had not asked her to. “Jane Doe” made the video and took the pictures of herself on several different occasions, and sent them from her computer to Zuniga by way of the Internet, at her home in Lubbock County, Texas, between November 24, 2005 and December 5, 2005.

22. On December 5, 2005, “Jane Doe” learned that her step-father had located a number of sexually explicit videos and pictures of her on the computer. “Jane Doe” initially told her mother and step-father that she took the pictures and video of herself for her ex-boyfriend, but later admitted to having done it for Zuniga.

23. On December 6, 2005, “Jane Doe's” mother contacted Zuniga’s mother and advised her of the situation. During one of the phone calls the reporting party had with Zuniga and his mother, the reporting party confronted them about the videos and pictures of “Jane Doe”, along with the details surrounding the relationship between “Jane Doe” and Zuniga. The reporting party arranged for the phone call to be placed on speaker phone where “Jane Doe” heard Zuniga denying the relationship between himself and “Jane Doe”. Zuniga claimed he was just helping “Jane Doe” with some issues she was having in her life.

24. “Jane Doe” was then told to no longer communicate with Zuniga. “Jane Doe” did not comply with these instructions and continued to communicate with Zuniga. “Jane Doe” could not recall how many conversations she had with Zuniga after being confronted about the videos and pictures, although she does recall one of the conversations

occurring on December 7, 2005. During this conversation, Zuniga told "Jane Doe" he was having a hard day and still considered "Jane Doe" and himself "together". Prior to hanging up the phone, they professed their love for each other.

25. "Jane Doe" did not want to see Zuniga get in trouble and believed if she continued to cooperate with law enforcement that Zuniga may end up going to prison.


26. Forensic analysis has been completed on the flash drive provided by the reporting party and her husband on December 12, 2005. Some images of "Jane Doe" that her step-father had copied onto the drive, and later deleted, were recovered. I have viewed some of those images, and observed that at least one of the images focused on "Jane Doe's" genitals and pubic area, and constitutes child pornography because the image depicts lascivious exhibition of the genitals and pubic area of a 13 year-old child.

27. On December 15, 2005, I determined that effective December 16, 2005, the Zuniga's new address was 11546 Ashdon Lane, Frisco, Texas 75035.

28. On December 27, 2005, I executed a search warrant at 11546 Ashdon Lane, Frisco, Texas, and recovered two computers, a flash drive, numerous photographs of "Jane Doe", as well as other items. During the search I interviewed Zuniga. Among his many statements and admissions, Zuniga stated that he had communicated with "Jane Doe" on many occasions between June, 2005, and the time of the interview, and that the communications were conducted by e-mail, chat, and telephone. Zuniga stated that he and "Jane Doe" used several e-mail accounts. Zuniga acknowledged writing the two e-mails referenced in Paragraph 13 of this affidavit, and admitted that he had sent instant chat

messages to "Jane Doe" that were very inappropriate. Zuniga admitted that he had encouraged "Jane Doe" to send sexually explicit video and images of herself to him after he set up the computer for her in her room, and that he had engaged in various sex acts with "Jane Doe", including oral-genital sexual intercourse. Zuniga stated that he had deleted all of the sexually explicit images of "Jane Doe" that he had on his computers, using a program he downloaded from the Internet that was intended to permanently erase the images from the hard drives.

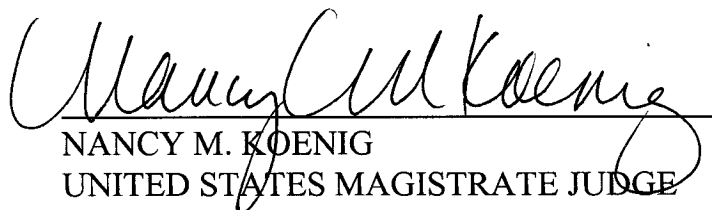
29. Upon forensic examination of the flash drive that was recovered during the execution of the search warrant at Zuniga's residence in Frisco, Texas, on December 27, 2005, a sexually explicit video depicting "Jane Doe" dancing nude in her bedroom in Lubbock, Texas, was recovered. The video had been deleted, but was recovered through the use of forensic software.



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Keith Quigley  
Special Agent  
Federal Bureau of Investigation  
Lubbock, Texas

Subscribed and sworn before me this 16th day of June, 2006.



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NANCY M. KOENIG  
UNITED STATES MAGISTRATE JUDGE